# LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

## LR 16.1 PRE-TRIAL PROCEDURES

### LR 16.1.1 SCHEDULING CASE MANAGEMENT CONFERENCE-- GENERALLY

**A.** As soon as counsel are identified, but in any event, within 60 days of the filing of an answer (or the answer of the last defendant), the judicial officer to whom the case is assigned shall schedule an initial case management conference. A judicial officer is either a United States District Court judge or a United States magistrate judge. The judicial officer may defer an initial conference if a motion is pending such as a motion to dismiss or to transfer venue, which may make an initial conference superfluous.

B. The judicial officer may conduct such further status conferences as are consistent with the circumstances of the particular case and this rule, and may revise any prior scheduling order for good cause.

C. At each conference each party not appearing pro se shall be represented by an attorney who shall have full authority to bind the party in all pretrial matters, and shall have authority to discuss settlement of the action.

D. At each such conference, attorneys shall ensure that the parties are available, either in person or by telephone, except that a governmental party may be represented by a knowledgeable delegate.

E. Initial case management conferences shall not be conducted in any civil action that is referred to arbitration pursuant to Local Rule 1 6.2, or in civil actions involving social security claims, bankruptcy appeals, habeas corpus, government collection, and prisoner civil rights cases, unless the judge directs otherwise.

F. No judicial officer shall depart from the provisions of these rules and impose additional requirements on counsel or the parties, except as may be necessary in an individual case to avoid injustice.

LR 16.1.2 CASE MANAGEMENT PLAN

A**.** The judicial officer shall, after consultation with counsel, enter a case management order which may include, but need not be limited to, the following:

1. the dates by which the parties must move to amend pleadings or add new parties;

2. the dates for completion of fact and expert discovery;

3. the dates for document production;

4. the dates for submission of experts' reports and the dates for depositions of experts, if appropriate;

5. the dates for filing of dispositive motions after considering whether such motions should be brought at an early stage of the proceedings (i.e., before completion of fact discovery or submission of experts' reports);

6. the date of the pretrial conference;

7. the designation of the case for arbitration, mediation, appointment of a special master or other special procedure; and

8. the presumptive trial date, or the date of the subsequent status conference for complex cases.

B. The case management order may further include such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs.

C. The judicial officer shall, after consultation with the parties, designate each civil action either Track I or II. Each class action, antitrust, securities, environmental, patent, trademark, multi-district or complex case shall presumptively be designated as Track II.

D. The judge shall also advise each party of the provisions of Local Rule 16.2 (Voluntary Arbitration).

E. In a civil action arising under 18 U.S.C. 1961-1968, the judge may require a RICO case statement to be filed and served in a form approved by the court.

F. Counsel shall confer to resolve any discovery or case management disputes, without judicial intervention. Any dispute not resolved shall be presented by motion in accordance with Local Rule 7.1.

G. Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc., which are the subject matter of the motion.

**LR 16.1.3 SUBSEQUENT CONFERENCES - TRACK I AND TRACK II CASES**

Track I cases are those which are neither subject to Local Rule 16.2 (Voluntary Arbitration) nor designated as Track II. Track I cases are presumed to require infrequent judicial conferences or

other judicial intervention after the initial case management conference. A pretrial conference shall presumptively be conducted within 1 2 months of filing of an initial answer in Track I cases, and scheduled for trial within 1 8 months after the filing of the complaint.

Counsel are advised that the judges will make regular use of a "trailing docket" of Track I cases. When such procedures are employed, the judge shall provide counsel with reasonable notice of the date on which the case will be called for trial.

Track II cases are those which, based on the complexity of the pleadings or facts, or the demands of the case, appear to require frequent conferences or other judicial intervention. Status conferences shall be scheduled on a regular basis, and the case shall be scheduled for trial on a date certain, as justice requires.

**LR 16.1.4 PRETRIAL CONFERENCE**

**A.** Within 20 days of the close of the discovery period, counsel for the plaintiff shall file and serve a brief narrative statement of the material facts that will be offered at trial, including all damages claimed, the method of calculation, and the damages that will be proven. There shall be attached to the statement:

1. A copy of all reports containing the substance of the facts, findings or opinions, and a summary of the grounds and reasons for each opinion of any expert whom a party expects to call as a witness at the trial. If timely production of any such report is not made, the testimony of such expert shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of an expert shall be confined to the scope of his report. The report of an expert shall bear his/her signature.

2. A copy of all reports containing findings or conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case. If timely production of any such report is not made, the testimony of such physician shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of a physician shall be confined to the scope of the report.

3. Names and addresses of all witnesses, including damage witnesses, that the plaintiff expects to call.

4. A list of any unusual legal issues.

5. A list of the exhibits which the plaintiff expects to offer in evidence, containing the identifying mark of each exhibit and a brief description of each exhibit. Exhibits shall be examined by opposing counsel prior to the pretrial conference in preparation for the conference.

6. Authorizations to other parties to examine pertinent records unless earlier provided.

B. Within 20 days of filing of the plaintiff's pretrial statement, counsel for defendant shall file and serve a brief narrative statement of the material facts that will be offered at trial, including the defenses to the damage claims. There shall be attached to the statement:

1. A copy of all reports containing the substance of the facts, findings, opinions and a summary of the grounds and reasons for each opinion of any expert whom a party expects to call as a witness at the trial. If timely production of any such report is not made, the testimony of such expert shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of an expert shall be confined to the scope of the report. The report of an expert shall bear his/her signature.

2. A copy of all reports containing findings and conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case. If timely production of any such report is not made, the testimony of such physician shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of a physician shall be confined to the scope of the report.

3. Names and addresses of all witnesses, including damage witnesses, that the defendant expects to call.

4. A list of any unusual legal issues.

5. A list of all of the exhibits which defendant expects to offer in evidence containing the identifying mark of each exhibit and a brief description of each exhibit. Exhibits shall be examined by opposing counsel prior to the pretrial conference in preparation of the conference.

6. Authorizations to other parties to examine pertinent records, unless earlier provided.

C. Within 20 days of the filing of defendant's pretrial statement, counsel for any third party defendant shall file a brief narrative statement meeting the requirements set forth above for plaintiffs and defendants.

D. Following the filing of the statements, counsel shall meet with the court at a time fixed by the court for a pretrial conference. Prior to the conference, counsel shall determine, in jury cases, whether they can agree that the case shall be tried non-jury. If an agreement is reached, the parties shall report to the court at the conference. If no agreement is reached, no inquiry shall be made and no disclosure shall be made identifying the attorney or party who failed to agree.

E. At the pretrial conference, the following shall be done:

1. Each attorney shall indicate on the record whether the taking of the deposition of an expert witness may ensure the just, speedy and inexpensive resolution of the civil action. If the court grants the request to depose an expert, the court shall grant reciprocal discovery of expert witnesses upon request. The depositions of expert witnesses shall be completed within 45 days

of the pretrial conference.

2. Each attorney shall indicate on the record whether the exhibits of any other party are agreed to or objected to, and the reason for any objection.

3. If any legal issues have not been decided, the proper motions shall be presented, along with a brief.

4. Counsel shall have inquired of their authority to settle and shall have their clients present or available by phone. The judge shall inquire whether counsel have discussed settlement.

5. Such record shall be made of the conference as the judge orders. Failure to fully disclose in the pretrial narrative statements, or at the pretrial conference, the substance of the evidence proposed to be offered at trial, will result in the exclusion of that evidence at trial, unless the parties otherwise agree or the court orders otherwise. The only exception will be evidence used for impeachment purposes.

6. Only in an unusual case may the court require additional material from counsel.

F. In the event that the civil action has not been tried within 1 2 months of the pretrial conference, the judicial officer shall schedule a status conference to discuss the possibility of settlement and establish a prompt trial date.

**LR 16.2 VOLUNTARY ARBITRATION**

**LR 16.2.1 SCOPE AND PURPOSE OF RULE**

This rule governs the arbitration program for referral of civil actions to court-annexed arbitration pursuant to 28 U.S.C. § 651. Its purpose is to establish a less formal procedure for the just, efficient and economical resolution of civil actions for money damages while preserving the right to a trial de novo on demand.

**LR 16.2.2 AUTHORITY OF ASSIGNED JUDGE**

Every action subject to this rule shall be assigned to a judge upon filing in the normal course in accordance with the court's assignment plan, and the assigned judge shall have discretionary authority, notwithstanding referral of the action to arbitration, to conduct status conferences, hear motions, and in all other respects supervise the action in accordance with these rules.

**LR 16.2.3 SELECTION AND COMPENSATION OF ARBITRATORS**

**A. Selection of Arbitrators.** The clerk shall maintain a roster of arbitrators who shall hear and decide actions under this rule. Arbitrators shall be selected from time to time by the court from applications submitted by or on behalf of attorneys eligible to serve. To be eligible for selection

by the court an attorney must (1) have been admitted to practice for not less than ten (10) years, (2) be a member of the bar of this court, or a member of the faculty of an accredited law school within Pennsylvania; and (3) be recommended by the committee on arbitration and determined by the chief judge to be competent to perform the duties of an arbitrator. Each person shall upon selection take the oath or affirmation prescribed in 28 U.S.C. Section 453 and shall complete the training required by the court.

**B. Application Process.** Qualified persons willing to serve as arbitrators will be obtained by direct recruitment, by advertisement in the Pittsburgh Legal Journal, Erie County Law Journal and Cambria County Legal Journal, and by correspondence with law schools, law firms and individual lawyers, and other relevant sources. All interested persons shall be requested to submit applications on the form which is available in the office of the clerk of court. The committee on arbitration shall submit a list of qualified persons to the clerk of court. The chief judge shall certify as many arbitrators as determined to be necessary for the program from this list.

**C. Withdrawal by Arbitrator.** Any person whose name appears on the roster maintained by the clerk of court may ask at any time to have his/her name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

**D. Compensation and Reimbursement.** With the approval of the Administrative Office, arbitrators shall be paid $250.00 per day or portion of each day of hearing in which they participate as a single arbitrator or $100.00 for each day or portion of a day if serving as a member of a panel of three. At the time when the arbitrators file their decision, each shall submit a voucher on the form prescribed by the clerk for payment by the Administrative Office of the United States Courts of compensation and out-of-pocket expenses necessarily incurred in the performance of the duties under this rule.

## LR 16.2.4 ACTIONS SUBJECT TO THIS RULE

A. The clerk of court shall designate and process for arbitration all civil cases (including adversary proceedings in bankruptcy) wherein money damages only are being sought excluding, however, (1) social security cases, (2) cases in which a prisoner is a party, (3) cases alleging a violation of a right secured by the U.S. Constitution, and (4) actions in which jurisdiction is based in whole or in part on 28 U.S.C. § 1343.

B. Notwithstanding any provision to the contrary, the United States District Court for the Western District of Pennsylvania shall permit any party to withdraw or opt-out of the arbitration program by filing a notice with the clerk of court within ten (10) days after the filing of the answer of defendant, or answer of the third party defendant, if any, that the party does not consent to arbitration.

C. The judge to whom the case has been assigned may, sua sponte or upon motion filed by a

party prior to the appointment of the arbitrators to hear the case pursuant to LR 1 6.2.5 (C), order the case exempted from arbitration upon a finding that the objectives of arbitration would not be realized because (1) the action involves complex legal issues, (2) because legal issues predominate over factual issues, or (3) for other good cause.

**LR 16.2.5 SCHEDULING ARBITRATION TRIAL**

A. After an answer is filed in a case determined eligible for arbitration, the arbitration clerk shall send a notice to counsel setting forth the tentative date and time for the arbitration trial. The date of the arbitration trial set forth in the notice shall be a date approximately one hundred fifty (150) days after the date the answer was filed. The notice shall also advise counsel that they may agree to an earlier date for the arbitration trial provided the arbitration clerk is notified within thirty (30) days of the date of the notice. The notice shall also advise counsel that they have one hundred twenty (120) days after the date the answer was filed to complete discovery unless the judge to whom the case has been assigned orders a shorter or longer period for discovery. In the event a third party has been brought into the action, this notice shall not be sent until an answer has been filed by the third party.

B. After completion of discovery, the plaintiff shall file a pretrial statement within ten (10) days, the defendant shall file a pretrial statement within ten (10) days thereafter, and the third-party defendant, if any, within ten (10) days thereafter.

C. After the pretrial statements have been filed, the judge to whom the case has been assigned shall sign an order setting forth the date and time of the arbitration trial and the names of the arbitrators designated to hear the case. The date of the arbitration trial shall not conflict where possible with the state court trial terms. In the event that a party has filed a motion to dismiss the complaint, a motion for summary judgment, a motion for judgment on the pleadings, a motion to join necessary parties, or other motion, the judge shall withhold the order until the court has ruled on the motion. Motions for summary judgment pursuant to Rule 56 shall be filed on or before the close of discovery.

D. The arbitration trial shall be held before a panel of three arbitrators, one of whom shall be designated as chairperson of the panel by the clerk unless the parties agree upon a single arbitrator and notify the arbitration clerk at the close of discovery. The arbitration panel shall be chosen through a random selection process by the clerk of court from the lawyers who have been certified as arbitrators unless the parties agree upon the arbitrator or panel of arbitrators and notify the arbitration clerk at the close of discovery. The parties may agree upon an arbitrator(s) from without the roster maintained by the clerk, provided that the name or names of such person(s) be submitted, to, and approved by, the chief judge of this court to serve as arbitrator(s) in that case.

E. Upon receipt of the notice scheduling the case to proceed to arbitration and appointing an arbitrator(s), counsel for the plaintiff shall promptly forward to the arbitrator(s) copies of all pleadings as limited by Fed.R.Civ.P. 7 including any counterclaim or third party complaint and answers thereto, and pretrial statements.

F. Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in Title 28, U.S.C. § 144, and shall disqualify themselves in any action in which they would be required under Title 28, U.S.C. § 455 to disqualify themselves if they were a justice, judge, or magistrate judge.

G. The arbitrators designated to hear the case shall not discuss settlement with the parties or their counsel, or participate in any settlement discussions concerning the case until a decision has been rendered.

**LR 16.2.6 THE ARBITRATION TRIAL**

A. The trial before the arbitrators shall take place on the date and at the time set forth in the order of the court. The trial shall take place in the United States courthouse in a courtroom assigned by the arbitration clerk.

B. Counsel for the parties shall report settlement of the case to the arbitration clerk and all members of the arbitration panel assigned to the case.

C. The trial before the arbitrators may proceed in the absence of any party who, after notice, fails to be present. In the event, however, that a party fails to participate in the trial in a meaningful manner, the court may impose appropriate sanctions, including, but not limited to the striking of any demand for a trial de novo filed by that party.

D. Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at the trial before the arbitrators. Testimony at the trial shall be under oath or affirmation.

E. Authority of Arbitrator. The arbitrator is authorized to administer oaths or affirmations and each party shall have the right to cross-examine witnesses. The arbitrator shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing before him/her. Any two members of a panel shall constitute a quorum, but (unless the parties stipulate otherwise) the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

F. Ex Parte Communication. There shall be no ex parte communication between an arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

G. The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least ten (10) days prior to the trial and the arbitrators shall receive such exhibits into evidence without formal proof unless counsel has been notified at least five (5) days prior to the trial that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrators may refuse to receive into evidence any exhibit, a copy or photograph of which had not been delivered prior to trial to the

adverse party, as provided herein.

H. A party may have a recording and transcript made of the arbitration hearing at the party's expense.

**LR 16.2.7 ARBITRATION AWARD AND JUDGMENT**

The arbitration award shall be filed with the court promptly after the trial is concluded; however, in exceptional circumstances the award may be filed within ten (10) days. The award shall be entered as the judgment of the court after the thirty (30) day time period for requesting a trial de novo has expired, unless a party has demanded a trial de novo, as hereinafter provided. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any demand for trial de novo shall constitute a demand for trial de novo of all claims and parties.

**LR 16.2.8 TRIAL DE NOVO**

A. Within thirty (30) days after the arbitration award is entered on the docket, any party may demand a trial de novo in the district court. Written notification of such a demand shall be filed and served by the moving party upon all counsel of record or other parties. Withdrawal of a demand for a trial de novo shall not reinstate the arbitrators' award and the case shall proceed as if it had not been arbitrated.

B. Upon demand for a trial de novo, the action shall be placed on the trial calendar of the court and treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury which a party would otherwise have shall be preserved inviolate.

C. At the trial de novo, the court shall not admit evidence that there had been an arbitration trial, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding unless the evidence would otherwise be admissible in the court under the Federal Rules of Evidence.

D. To make certain that the arbitrators' award is not considered by the court or jury either before, during or after the trial de novo, the arbitration clerk shall, upon the filing of the arbitration award, enter onto the docket only the date and "arbitration award filed" and nothing more, and shall retain the arbitrators' award in a separate file in the clerk's office. In the event no demand for trial de novo is filed within the designated time period, the arbitration clerk shall enter the award on the docket and place it in the case file.

**LR 16.2.9 CASES PENDING PRIOR TO THE IMPLEMENTATION OF ARBITRATION**

Notwithstanding the provisions of the rules set forth above, each district judge shall select cases from his/her docket currently in process and notify counsel of the availability to the arbitration

program. A case will qualify for resort to arbitration if it complies with the provisions of this rule.

## LR 16.3 MEDIATION/NEUTRAL EVALUATION

### LR 16.3.1 SCOPE AND PURPOSE OF RULE

This rule governs referral of civil actions to court-annexed mediation/neutral evaluation for the presentation at a non binding conference of the legal and factual basis of a case to a neutral court representative who shall serve as an adjunct settlement judge. Its purpose is to establish an informal procedure in an effort to conclude civil actions without a trial on the merits.

### LR 16.3.2 SELECTION AND COMPENSATION OF ADJUNCT SETTLEMENT JUDGES

**A. Selection of Adjunct Settlement Judges.** The clerk shall maintain a roster of adjunct settlement judges who shall be designated from time to time by the court from applications submitted by or on behalf of attorneys eligible to serve. To be eligible for selection by the court an attorney must (1) have been admitted to practice for not less than ten (10) years, (2) be a member of the bar of this court, or a member of the faculty of an accredited law school within Pennsylvania, and (3) be recommended by the committee on mediation/neutral evaluation and determined by the chief judge to be competent to perform the duties of an adjunct settlement judge. Each person so designated shall complete the training required by the court or the mediation/neutral evaluation committee. The parties may agree upon an adjunct settlement judge from without the roster maintained by the clerk, including a person who is not a lawyer, provided that the name of such person be submitted to, and approved by, the chief judge of this court to serve as an adjunct settlement judge.

**B. Application Process.** Any lawyer possessing the qualifications set forth in subsection A who desires to serve as an adjunct settlement judge may submit an application on the form which is available in the office of the clerk of court. The committee on mediation/neutral evaluation shall submit a list of qualified persons to the clerk of court. The chief judge shall certify as many adjunct settlement judges as determined to be necessary for the Program.

**C. Withdrawal by Adjunct Settlement Judge.** Any person whose name appears on the roster maintained by the clerk of court may ask at any time to have his/her name removed or, if selected to serve, decline to serve but remain on the roster.

**D. Compensation and Reimbursement**. Adjunct settlement judges shall receive no compensation for services and shall not be reimbursed for expenses. Their services and expenses shall be considered a pro bono service in the interest of providing litigants with a speedier and less expensive alternative to the burdens of discovery and a courtroom trial. In unusual cases, with court approval, persons selected by the parties and approved by the court to serve as an adjunct settlement judge may be compensated by the parties as agreed to by them.